

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MAR 09 2004

JAMES R. LARSEN, CLERK  
DEPUTY  
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

STATE FARM FIRE AND CASUALTY,  
as subrogee for Stephen and Lane Klees,

Plaintiff,

vs.

OXARC, INC., a Washington  
corporation, and THE CITY OF  
SPOKANE, a municipality,

Defendants.

NO. CS-03-426-JLQ

ORDER OF DISMISSAL  
WITHOUT PREJUDICE

A status conference was held in this matter on March 2, 2004. Plaintiffs were represented by **Craig Evezich**. Oxarc, Inc. was represented by **Kasey Myhra**. The City of Spokane was represented by **Salvatore Faggiano**. At issue was the Order to Show Cause issued February 27, 2004. (Ct. Rec. 7).

The parties were directed to show cause why the matter should not be dismissed pursuant to applicable Ninth Circuit precedent regarding who is the real party in interest under Fed. R. Civ. P. 17 in Washington subrogation actions. See *Allstate v. Hughes*, \_\_ F.3d \_\_, 2004 WL 292091 (9th Cir. 2004). The Klees, as the insured, are the real party in interest under Washington law. The Klees are citizens of Washington. The Klees mandatory inclusion in this matter would destroy diversity jurisdiction because complete diversity of citizenship would be lacking. The parties have not alerted the court to any other basis for subject matter jurisdiction.

Accordingly, no cause being shown,

**IT IS HEREBY ORDERED:**

1 1. The action is dismissed without prejudice.

2 2. The Clerk shall close the file.

3 **IT IS SO ORDERED.** The Clerk is hereby directed to enter this Order, furnish  
4 copies to counsel, and close the file.

5 **DATED** this 3<sup>rd</sup> day of March, 2004.

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8 JUSTIN L. QUACKENBUSH  
9 SENIOR UNITED STATES DISTRICT JUDGE  
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